

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



ORIGINAL  
WITH PROOF  
OF SERVICE

76-7364

To be submitted by  
ROBERT S. ORDMAN

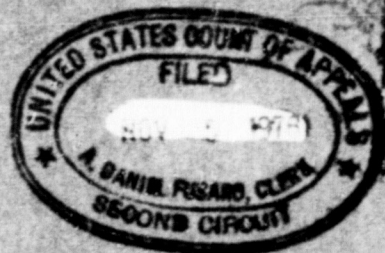
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**UNITED STATES COURT OF APPEALS**

*for the*

**SECOND CIRCUIT**

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CONSTANCE E. BROOKS,

Plaintiff-Appellant,

- v -

WASHINGTON FEDERAL SAVINGS AND LOAN  
ASSOCIATION, HOTEL PARIS and WESTPAR  
REALTY CORP.,

Defendants-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**BRIEF FOR DEFENDANTS-APPELLEES**

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(5851)

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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Docket No. 76-7364

-----X

CONSTANCE E. BROOKS,

Plaintiff-Appellant,

- v -

WASHINGTON FEDERAL SAVINGS AND  
LOAN ASSOCIATION, HOTEL PARIS and  
WESTPAR REALTY CORP.,

Defendants-Appellees.

On Appeal from the United  
States District Court for  
the Southern District of  
New York.

-----X

BRIEF FOR DEFENDANTS-APPELLEES

PRELIMINARY STATEMENT

This is an appeal brought by plaintiff-appellant (hereinafter "appellant") from a judgment of the United States District Court for the Southern District of New York (Robert L. Carter, U.S.D.J.) entered June 11, 1976, which dismissed appellant's complaint for lack of subject matter jurisdiction. Said judgment was entered upon a motion by defendants-appellees (hereinafter "appellees") to dismiss

the complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure under notice of motion dated May 12, 1976.

Due to the fact that appellant failed to serve and file a proper appendix, appellees annex hereto as an appendix a certified copy of the docket entries in the District Court, as well as a copy of the endorsed opinion of the District Court.

#### STATEMENT OF ISSUE PRESENTED

The issue before this Court on this appeal is whether the District Court properly ordered dismissal of the complaint for lack of subject matter jurisdiction where the uncontroverted facts submitted to the District Court showed that the complaint stated no claim under federal law pursuant to 28 U.S.C. §1331, and where the plaintiff had resided within the City and State of New York since at least mid 1974, and both of the actual defendants were either incorporated within or had their principal places of business within the State of New York.

#### STATEMENT OF THE CASE

##### A. Proceedings to Date

The instant action was initiated by service of the summons upon the defendant Westpar Realty Corp. (sued herein as "West Par Corporation") on or about April 13, 1976. Thereafter, a copy of the summons was also served upon the defendant Washington Federal Savings and Loan

Association (sued herein as "Washington Federal Savings and Loan").

Due to the somewhat incoherent nature of the pleadings served with the summons, counsel for defendants requested and received a conference before the District Court (Robert L. Carter, U.S.D.J.) on May 11, 1976, in order to attempt to make sense of the pleadings and ascertain the true nature of the claims alleged. The District Court's endorsed opinion and order recites the fact that the conference was held, and notes that it appeared, at that time, that subject matter jurisdiction might be lacking.

Thereafter, by notice of motion dated May 12, 1976, appellees moved, pursuant to Rule 12(b)(1) FRCP for an order dismissing the complaint for lack of subject matter jurisdiction. Annexed to the notice of motion were copies of the summons, complaint, the so-called "amended complaint", the attachments thereto, and the certificate of incorporation of Westpar Realty Corp. A later affidavit by Robert S. Ordman, sworn to May 19, 1976, showed that the "Hotel Paris" was not a legal entity, and included, also, a copy of the charter of Washington Federal Savings and Loan Association.

Appellant responded to the motion on or about June 1, 1976, with a so-called "answer to defendants, notice of motion and affidavit", which added nothing to appellant's complaint and "amended complaint".



Thereafter, the District Court, on June 6, 1976, endorsed its order and opinion dismissing the instant action for lack of subject matter jurisdiction, and later entered judgment to that effect on July 11, 1976.

On July 6, 1976, counsel for appellees received a notice of appeal from the appellant, pro se, and on or about July 19, 1976, a further notice of appeal was issued by the Deputy Pro Se Clerk of the District Court. It appears that appellant docketed this appeal on August 2, 1976. According to the Civil Appeal Pre-Argument Statement (Form C) of this Court, the nature of the action was stated to be (1) "assault, libel and slander", (2) "other personal injury", and (3) "other personal property damage". It appears that the pre-argument statement was completed by the appellant herself.

Although the complaint is somewhat incoherent, it can be stated that this suit seems to involve claims for both an injury to a minor child of the appellant, and also for harrassment of appellant as a tenant of premises owned by Westpar Realty Corp., known as the "Hotel Paris". The District Court found, in its opinion, that such claims constituted the gravamen of the complaint.

B. The Facts

The facts on this appeal are essentially not in dispute. The record below reveals that, of the three appellees, one is a corporation incorporated and doing business within the State of New York (exhibit attached to

notice of motion of May 12, 1976), and one is a federally chartered savings and loan association, located in the City, County and State of New York (charter annexed to affidavit of Robert S. Ordman of May 19, 1976). According to the later affidavit, the appellee denominated the "Hotel Paris" is not, in fact, a legal entity, but rather a designation of specified real property in the City of New York, known by the street address 752 West End Avenue, New York, N. Y. Appellant, in her affidavit served upon counsel to appellees on June 1, 1976, apparently attempts to controvert appellees' assertion of the status of the "Hotel Paris". However, appellant's position is not documented, and the fact that the "Hotel Paris" is not a legal entity is not in dispute before this Court.

In addition, the record below reveals that appellant herself (plaintiff below) is a resident of the City and State of New York, being the tenant of rooms 1420 and 1421 at the Hotel Paris. (See the address stated on the summons.) Appellant has never adequately rebutted the fact of her residency within the State of New York; indeed, according to paragraph 4 of the so-called "amended complaint", appellant alleges that she "has been tenant from at least 2 Jul 74 paying monies owed for agreed essentials timely." Appellant avers, however, without more, that her "legal and desired" residence is in Los Angeles, California.



ARGUMENT

THE JUDGMENT OF THE DISTRICT COURT  
SHOULD BE AFFIRMED IN ALL RESPECTS

We shall not, here, seek to characterize appellant's case further than to note that her papers show this matter to be without substance in this Court.

In support of our opposition to appellant's position, we annex hereto, as an appendix, a copy of the opinion below of Judge Carter, upon which we rely. Nothing can or need be added to the learned Judge's findings and conclusions, except to note, as suggested in the opinion, that appellant's remedy lies in the New York state courts rather than the federal system.

CONCLUSION

By reason of the foregoing, the order and judgment of the District Court, dismissing the complaint for lack of subject matter jurisdiction, should be affirmed in all respects.

Respectfully submitted,

DEMOV, MORRIS, LEVIN & SHEIN  
Attorneys for Appellees  
40 West 57th Street  
New York, N. Y. 10019

A. DAVID BENJAMIN  
ROBERT S. ORDMAN  
Of counsel

DIST/OFFICE	YR.	NUMBER	MO. DAY YEAR	J	N/S	O	R	23	\$	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	76	1098	03 08 76	3	440	1				152,000	0857		76	1098

PLAINTIFFS

BROOKS, CONSTANCE E., ETC

DEFENDANTS

RLC

WASHINGTON FEDERAL SAVINGS &  
LOAN BANK  
(HOTEL PARIS) (WEST PAR CORP)

wjf

CAUSE

Harrasing of plttf.

Constance Brooks Pro Se

752 West End Ave.,  
Bx 1421 1420  
NYC 10025

ATTORNEYS

Wash. Fed Savings & West Par Corp  
DEMAY, MOORE, LEVIN & SHULMAN  
40 W. 57 St., NYC 10019--

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID		STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C. D. NUMBER	CARD
				DATE MAILED
				JS-5
				JS-6

DATE	NR.	PROCEEDINGS
3-8-76		Fld Order permitting Forma Pauperis status.....Wdelstein, Ch. J.
3-8-76		Fld Compl't & Iss Summs.
4-14-76		Fld Amended Compl't.
5-7-76		Fld Summs with Marshal ret. Served
		West Par copp by S. Sherman on 4-26-76
		Hotel Paris by L. Paineira " 5-3-76
		Wash Saving Bk by L. Friedman " " "
5-14-76		Fld Defts' Wash Fed Sav. and Loan & West Par's Notice of Motion ofr an order pur to Rule 12 (b)(1)...dismissing action...ret 5-22-76-10AM Rm 313.
5-14-76		Fld Defts' Memo of Law in suport of their motion to dismiss.
5-22-76		Fld Affidvt of defts Re:Hotel Paris.
6-7-76		Fld plttf's a wer to defts' Notice of Motion.
6-7-76		Fld Plttf's Interrogo addressed to defts.
6-9-76		Fld Endorsement on bk of motion fld 5-14-76...Defts'Washington Fed. Saving & Loan Asso and Westpar Realty Corp. move, pur to Rule 12(b)(1),FRCP.,for dismissal on the ground that this court lacks jurisdiction over the subject matter. The motion is granted.Defts also state in an affidvt that the Hotel Paris is no longer an independent entity, and that the name now refers merely to the premises located at 752 West 2nd Ave., W.,W. The comelt. must be dismissed as to this deft. as well...It appearing that there is no grounds for jurisdiction over this action, it is hereby dismissed. ....So Ordered....Carter,J. on 6-9-76
6-11-76		Fld Judgment that defts Washington Federal Savings and Loan, Hotel Paris and Westpar Realty Corp.. have judgment vs plttf. Constance Brooks, dismissing the complt and amended complt., for lack of the subject matter,...R.F.Burghardt,Clerk.
7-22-76		Fld plttf's notice of appeal to USA.. from Decision & order of Carter,J. dismissing the complaint on 6-9-76 (notice mailed by pro-se clerk)
7-22-76		USA.. motion to proceed in forma pauperis ..Granted,Carter,J.
8-10-76		FLD CERTIFICATION TO USCA ON 8-10-76

OK  
BJ

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk  
By B. Edwards  
Deputy Clerk

BEST COPY AVAILABLE



Constance Brooks v. Washington Federal Savings and  
Loan, Hotel Paris and West Par Corporation

76 Civ. 1098

ENDORSEMENT

Defendants Washington Federal Savings and Loan Association and Westpar Realty Corp. move, pursuant to Rule 12(b)(1), F.R.Civ.P., for dismissal on the ground that this court lacks jurisdiction over the subject matter. The motion is granted.

By complaint and amended complaint, pro se plaintiff Constance Brooks asserts a number of claims against the three defendants. Because of the opaque nature of plaintiff's charges, a conference was held on May 11, 1976, to allow plaintiff to explain to the court the basis for her action.

Based on information adduced at that conference and on what can be gleaned from the complaint and amended complaint, the following facts underlie plaintiff's claims. In May, 1973, Brooks stayed at the Hotel Paris with her young daughter. A person who stated he was from the phone company came into her room and assaulted the child. Brooks is now at the Hotel Paris, and states that she "has been tenant from at least 2 Jul 74." (Amended Complaint at p.1.) She asserts that she, along with other tenants, is being harassed by the management to force her to leave.

Her continued residence at the Hotel Paris makes plaintiff Brooks a citizen of New York State. Defendant Westpar Realty Corp. is incorporated in the State of New York and has its principal place of business in New York City. Likewise, defendant Washington Federal Savings and Loan Association is chartered in the State of New York and has its principal place of business in New York City. Thus, these two defendants are citizens of New York. +e

If the two apparently unrelated events give plaintiff any rights, those rights undoubtedly arise under state law. Brooks may be able to assert a cause of action for negligence based on a personal injury

MICROFILM

JUN 09 1976

to the child, or for harassment growing out of defendants' alleged efforts to force her to move out.<sup>1/</sup> But no cause of action arising out of federal law appears either from the pleadings or from the conference. Therefore, this court could only have jurisdiction if the parties are of diverse citizenship and the amount in controversy exceeds \$10,000. Since the diversity of citizenship required by 28 U.S.C. §1332 is lacking between plaintiff and defendants, the action must be dismissed as to these defendants.

Defendants also state in an affidavit that the Hotel Paris is no longer an independent entity, and that the name now refers merely to the premises located at 752 West End Avenue, New York, New York. The complaint must be dismissed as to this defendant as well.

It appearing that there is no grounds for jurisdiction over this action, it is hereby dismissed.

SO ORDERED.

Dated: New York, New York  
June 7, 1976

*Robert L. Carter*  
ROBERT L. CARTER  
U.S.D.J.

1/ At several points in the pleadings, plaintiff states that two children of hers have been abducted. It appears from other statements that these children may actually be in foster care. In any event, no action of the defendants is alleged to connect them to any abduction.



STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

ROBERT LA GRASSA, being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 62-20 67<sup>th</sup> RD  
MASKEITH, N.Y.

That on the 4 day of NOVEMBER, 1976,  
deponent personally served the within BRIEF FOR  
DEFENDANTS- APPELLEES  
upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

~~By leaving \_\_\_\_\_ true copies of same with a duly  
authorized person at their designated office.~~

By depositing 2 true copies of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

CONSTANCE E. BROOKS  
PLAINTIFF-APPELLANT PRO-SE  
752 WEST END AVE  
Box 1420, 1421  
NEW YORK, N.Y. 10025

Robert La Grassa

Sworn to before me this

4<sup>th</sup> day of November, 1976 Michael DeSantis

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930908  
Qualified in Bronx County  
Commission Expires March 30, 1978 77